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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

HUMAN RIGHTS, MASS EXODUSES AND DISPLACED PERSONS

Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39

Addendum

Guiding Principles on Internal Displacement

GE.98-10493 (E)

Introductory note to the Guiding Principles

1. Internal displacement, affecting some 25 million people worldwide, has become increasingly recognized as one of the most tragic phenomena of the contemporary world. Often the consequence of traumatic experiences with violent conflicts, gross violations of human rights and related causes in which discrimination features significantly, displacement nearly always generates conditions of severe hardship and suffering for the affected populations. It breaks up families, cuts social and cultural ties, terminates dependable employment relationships, disrupts educational opportunities, denies access to such vital necessities as food, shelter and medicine, and exposes innocent persons to such acts of violence as attacks on camps, disappearances and rape. Whether they cluster in camps, escape into the countryside to hide from potential sources of persecution and violence or submerge into the community of the equally poor and dispossessed, the internally displaced are among the most vulnerable populations, desperately in need of protection and assistance.

2. In recent years, the international community has become increasingly aware of the plight of the internally displaced and is taking steps to address their needs. In 1992, at the request of the Commission on Human Rights, the Secretary-General of the United Nations appointed a Representative on internally displaced persons to study the causes and consequences of internal displacement, the status of the internally displaced in international law, the extent of the coverage accorded them within existing international institutional arrangements and ways in which their protection and assistance could be improved, including through dialogue with Governments and other pertinent actors.

3. Accordingly, the Representative of the Secretary-General has focused the activities of his mandate on developing appropriate normative and institutional frameworks for the protection and assistance of the internally displaced, undertaking country missions in an ongoing dialogue with Governments and others concerned, and promoting a systemic international response to the plight of internally displaced populations.

4. Since the United Nations initially drew international attention to the crisis of internal displacement, many organizations, intergovernmental and non-governmental, have broadened their mandates or scope of activities to address more effectively the needs of the internally displaced. Governments have become more responsive by acknowledging their primary responsibility of protecting and assisting affected populations under their control, and when they cannot discharge that responsibility for lack of capacity, they are becoming less reticent to seek assistance from the international community. On the other hand, it is fair to say that the international community is more inclined than it is prepared, both normatively and institutionally, to respond effectively to the phenomenon of internal displacement.

5. One area in which the mandate of the Secretary-General's Representative has made significant progress has been in the development of a normative framework relating to all aspects of internal displacement. Working in close collaboration with a team of international legal experts, the Representative prepared a "Compilation and Analysis of Legal Norms" relevant to the needs and

rights of the internally displaced and to the corresponding duties and obligations of States and the international community for their protection and assistance. The Compilation and Analysis was submitted to the Commission on Human Rights by the Representative of the Secretary-General in 1996 (E/CN.4/1996/52/Add.2).

6. It is important to note that the Office of the United Nations High Commissioner for Refugees (UNHCR) has developed a manual, based on the Compilation and Analysis, for the practical use of its staff, especially in field operations. There are also indications that other organizations and agencies will follow the example of UNHCR in making use of the document.

7. The Compilation and Analysis examines international human rights law, humanitarian law, and refugee law by analogy, and concludes that while existing law provides substantial coverage for the internally displaced, there are significant areas in which it fails to provide an adequate basis for their protection and assistance. Besides, the provisions of existing law are dispersed in a wide variety of international instruments which make them too diffused and unfocused to be effective in providing adequate protection and assistance for the internally displaced.

8. In response to the Compilation and Analysis and to remedy the deficiencies in existing law, the Commission on Human Rights and the General Assembly requested the Representative of the Secretary-General to prepare an appropriate framework for the protection and assistance of the internally displaced (see resolutions 50/195 of 22 December 1995 and 1996/52 of 19 April 1996, respectively). Accordingly, and in continued collaboration with the team of experts that had prepared the Compilation and Analysis, the drafting of guiding principles was undertaken. The Commission on Human Rights, at its fifty-third session in April 1997, adopted resolution 1997/39 in which it took note of the preparations for guiding principles and requested the Representative to report thereon to the Commission at its fifty-fourth session. The Guiding Principles on Internal Displacement, completed in 1998, are annexed to the present document.

9. The purpose of the Guiding Principles is to address the specific needs of internally displaced persons worldwide by identifying rights and guarantees relevant to their protection. The Principles reflect and are consistent with international human rights law and international humanitarian law. They restate the relevant principles applicable to the internally displaced, which are now widely spread out in existing instruments, clarify any grey areas that might exist, and address the gaps identified in the Compilation and Analysis. They apply to the different phases of displacement, providing protection against arbitrary displacement, access to protection and assistance during displacement and guarantees during return or alternative settlement and reintegration.

10. The Principles are intended to provide guidance to the Representative in carrying out his mandate; to States when faced with the phenomenon of displacement; to all other authorities, groups and persons in their relations with internally displaced persons; and to intergovernmental and non-governmental organizations when addressing internal displacement.

11. The Guiding Principles will enable the Representative to monitor more effectively situations of displacement and to dialogue with Governments and all pertinent actors on behalf of the internally displaced; to invite States to apply the Principles in providing protection, assistance, reintegration and development support for them; and to mobilize response by international agencies, regional intergovernmental and non-governmental organizations on the basis of the Principles. The Guiding Principles are therefore intended to be a persuasive statement that should provide not only practical guidance, but also an instrument for public policy education and consciousness-raising. By the same token, they have the potential to perform a preventive function in the urgently needed response to the global crisis of internal displacement.

12. The preparation of the Guiding Principles has benefited from the work, experience and support of many institutions and individuals. In addition to the legal team cited above, many experts from international humanitarian and development organizations, the Office of the United Nations High Commissioner for Human Rights, regional bodies, scholarly institutions, non-governmental organizations and the legal community have made valuable contributions. Appreciation in particular is owed to the Centre for Human Rights and Humanitarian Law of the Washington College of Law of American University, and also to the American Society of International Law, the Faculty of Law of the University of Bern, the Ludwig Boltzmann Institute of Human Rights of the University of Vienna and the International Human Rights Law Group.

13. Support for the development of the Principles was gratefully received from The Ford Foundation, the Jacob Blaustein Institute for the Advancement of Human Rights, the European Human Rights Foundation, the Hauser Foundation, and the John D. and Catherine T. MacArthur Foundation.

14. The development of the Principles also benefited from the Brookings Institution-Refugee Policy Group Project on Internal Displacement, which received generous support from many sources, including the Governments of the Netherlands, Norway and Sweden, and the McKnight Foundation.

15. The Government of Austria hosted an expert consultation in Vienna in January 1998, for the purpose of finalizing the Guiding Principles, which is most gratefully acknowledged.

Annex

GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

INTRODUCTION: SCOPE AND PURPOSE

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.

2. For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.

3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:

(a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;

(b) States when faced with the phenomenon of internal displacement;

(c) All other authorities, groups and persons in their relations with internally displaced persons; and

(d) Intergovernmental and non-governmental organizations when addressing internal displacement.

4. These Guiding Principles should be disseminated and applied as widely as possible.

SECTION I - GENERAL PRINCIPLES

Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.

2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

Principle 2

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.

2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

Principle 3

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.

2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

Principle 4

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.

2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

SECTION II - PRINCIPLES RELATING TO PROTECTION FROM DISPLACEMENT

Principle 5

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

Principle 6

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.

2. The prohibition of arbitrary displacement includes displacement:

(a) When it is based on policies of apartheid, "ethnic cleansing" or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;

(b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;

(c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;

(d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and

(e) When it is used as a collective punishment.

3. Displacement shall last no longer than required by the circumstances.

Principle 7

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.

2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.

3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:

(a) A specific decision shall be taken by a State authority empowered by law to order such measures;

(b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;

(c) The free and informed consent of those to be displaced shall be sought;

(d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;

(e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and

(f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

Principle 8

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

Principle 9

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

SECTION III - PRINCIPLES RELATING TO PROTECTION DURING DISPLACEMENT

Principle 10

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

(a) Genocide;

(b) Murder;

(c) Summary or arbitrary executions; and

(d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

(a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;

(b) Starvation as a method of combat;

(c) Their use to shield military objectives from attack or to shield, favour or impede military operations;

(d) Attacks against their camps or settlements; and

(e) The use of anti-personnel landmines.

Principle 11

1. Every human being has the right to dignity and physical, mental and moral integrity.

2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:

(a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;

(b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and

(c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

Principle 12

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.

2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.

3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.

4. In no case shall internally displaced persons be taken hostage.

Principle 13

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.

2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

Principle 14

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.

2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

Principle 15

Internally displaced persons have:

(a) The right to seek safety in another part of the country;

(b) The right to leave their country;

(c) The right to seek asylum in another country; and

(d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

Principle 16

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.

2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.

3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.

4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

Principle 17

1. Every human being has the right to respect of his or her family life.

2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.

3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.

4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

Principle 18

1. All internally displaced persons have the right to an adequate standard of living.

2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:

(a) Essential food and potable water;

(b) Basic shelter and housing;

(c) Appropriate clothing; and

(d) Essential medical services and sanitation.

3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Principle 19

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.

2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.

3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

Principle 20

1. Every human being has the right to recognition everywhere as a person before the law.

2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.

3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

Principle 21

1. No one shall be arbitrarily deprived of property and possessions.

2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:

(a) Pillage;

(b) Direct or indiscriminate attacks or other acts of violence;

(c) Being used to shield military operations or objectives;

(d) Being made the object of reprisal; and

(e) Being destroyed or appropriated as a form of collective punishment.

3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

(a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;

(b) The right to seek freely opportunities for employment and to participate in economic activities;

(c) The right to associate freely and participate equally in community affairs;

(d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and

(e) The right to communicate in a language they understand.

Principle 23

1. Every human being has the right to education.

2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.

3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.

4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

SECTION IV - PRINCIPLES RELATING TO HUMANITARIAN ASSISTANCE

Principle 24

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.

2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

Principle 25

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.

2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.

3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

Principle 26

Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

Principle 27

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.

2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.

SECTION V - PRINCIPLES RELATING TO RETURN, RESETTLEMENT AND REINTEGRATION

Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.

2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.

2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

Principle 30

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

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